IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

SECOND APPEAL NO. 1337 OF 2005
AND
SECOND APPEAL NO. 1332 OF 2005.

Rajaram Ganpati Jadhav & Ors... ....Appellants.
V/s
Sopan Mahadeo Jadhav & Anr... ....Respondents.

Mr.L.S.Gaikwad, Adv. For the appellants.

Mr.P.J.Shinde, Adv. For respondent No.1.

CORAM: A.P.DESHPANDE, J.
19/7/07

PC:

The present appellant Dajiram and his brother Shahu entered into an agreement of sale of the suit property with Sopan Mahadev Jadhav-respondent No.1. Respondent No.1 instituted suit for specific performance of the agreement contending that the total consideration agreed was Rs.10,000/- and sum of Rs.5000/- was paid by way of earnest money. It was further pleaded that respondent No.1 was ready and willing to perform his part of contract. Amongst other pleas raised by the present appellant one of the plea was that Dajiram the appellant herein at the time of entering into agreement was not in sound mental condition to understand the real nature of contract. Hence the transaction stands vitiated. It is reiterated that the agreement was signed by present appellant and his brother Shahu. Though the said contention was taken in the pleading it appears that the same was not pressed in service before the trial Court for the reason that no issue was

framed and there is no discussion in the judgment in this regard by the trial Court. Perusal of the Memo of First Appeal reveals that no ground was raised before the First Appellate Court that the trial Court has erred in not considering the contention raised by the appellant that at the time of execution of the agreement he was not in sound mental condition. In the absence of such ground being raised in the First Appeal the First Appellate Court has not at all touched the said issue. In this second appeal the learned counsel for the appellant has tried to allege that though it was so pleaded before the trial Court erroneously no issue was framed by it and the trial Court has also failed to consider the said contention. Be that as it may, in the absence of any ground raised in the first appeal to that effect the said contention cannot be considered in the second appeal as the First Appellate Court has not dealt with the same in any manner whatsoever.

2. Besides a suit being filed by respondent No.1-Sopan for specific performance of the agreement the present appellant had also filed a civil suit seeking cancellation of the agreement of which specific performance has been asked for by respondent No.1. Both the suits were tried together and both the Courts below have rejected the appellant's prayer in his suit for cancellation of agreement of sale. The Courts below have simultaneously heard both the suits and disposed of the same by a common judgment. Perused the judgment passed by the First Appellate Court. The same does not require interference at the hands of this Court in second appeal. No substantial question of law emerges for consideration. Hense Second Appeal is summarily dismissed.

19.7.07